

Kager v. Astrue, 05-36136

FILED

Kleinfeld, J., dissenting:

NOV 26 2007

I respectfully dissent.

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

The ALJ's findings may be set aside only if they were based on legal error, or were not supported by substantial evidence in the record.<sup>1</sup> Neither standard is met.

In addition to Dr. Knudson's expert assessment of Kager's treating physicians, the ALJ independently considered the testimony and reports of *all* of Kager's treating physicians. The ALJ based many of his conclusions on the presence of *conflicting* evidence presented by Kager's own treating physicians, including Dr. Blaski, Dr. Eisenhower, Dr. Goldberg, and Dr. Virji.

Further, the ALJ fairly considered Kager's subjective pain allegations. Here, the ALJ relied on ample objective evidence in the form of treating physician reports and lab reports to conclude that Kager's testimony was not convincing.<sup>2</sup>

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<sup>1</sup>Gillet-Netting v. Barnhart, 371 F.3d 593, 595 (9th Cir. 2004).

<sup>2</sup>See Batson v. Commissioner of Social Security Administration, 359 F.3d 1190, 1196-1197 (9th Cir. 2004).

Accordingly, we should affirm the ALJ's decision which was supported by substantial evidence in the record.